



26 OCT 2004

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In re Application of
KUHMONEN, Mauri
Application No.: 09/623,542
PCT No.: PCT/AU99/00135
Int. Filing Date: 05 March 1999
Priority Date: 05 March 1998
Attorney Docket No.: GH-00322
For: SCREENING APPARATUS

DECISION ON PETITION

This decision is in response to applicant's "Petition to Withdraw Any Holding of Abandonment, Request for Acknowledgment of Pending Status and Contingent Petition to Revive Abandoned Application" filed on 08 September 2004, which is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 05 March 1999, applicants filed international application PCT/AU99/00135 which claimed a priority date of 05 March 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 September 1999. A Demand for preliminary examination was filed prior to the expiration of the 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee expired at midnight on 05 September 2000.

On 05 September 2000, applicant filed a Transmittal Letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee of \$860 and an English translation of the international application.

On 12 October 2000, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(e) U.S.C. 371 (Form PCT/DO/EO/905) indicating that the declaration was not in compliance with 37 CFR 1.66 or 37 CFR 1.68. The notification was mailed to an address that was not the correspondence address listed on the Transmittal Letter filed 05 September 2000.

On 30 May 2001, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application

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was abandoned for failure to respond to the notification of Missing Requirements mailed 12 October 2000 within the time period set therein.

On 23 April 2002, applicant filed Petition to Withdraw Holding of Abandonment which was granted in a "Decision on Petition" dated 04 June 2002.

On 27 June 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that the "nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 CFR 1.821-1.825 for the following reasons: A copy of the 'Sequence Listing' in computer readable form has been submitted. The content of the computer readable form, however, does not comply with the requirements of 37 CFR 1.822 and/or 1.832, as indicated on the attached CRF Diskette Report." Additionally, the United States Designated/Elected Office (DO/EO/US) mailed "Withdrawal of Previously Sent Notice" which indicated that "the Notice mailed on 5/29/01 was sent in error."

On 08 July 2002, applicant filed an executed declaration.

On 09 August 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) which set forth a 35 U.S.C. 371 completion date of 08 July 2002.

On 08 September 2004, applicant filed "Petition to Withdraw Any Holding of Abandonment, Request for Acknowledgment of Pending Status and Contingent Petition to Revive Abandoned Application."

DISCUSSION

The Notification of Defective Response (Form PCT/DO/EO/916) mailed 27 June 2002 indicated that the nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements set forth in 37 CFR 1.821-825. A review of the application reveals that the instant application does not contain any nucleotide or amino acid sequences and no sequence listing is required. Therefore, there is no need to file a sequence listing for the present application and the Notification of Defective Response (Form PCT/DO/EO/916) mailed 27 June 2002 is hereby vacated.

A review of the application file reveals that the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America have been completed.

CONCLUSION

The petition under 37 CFR 1.181 is GRANTED.

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The Notification of Defective Response (Form PCT/DO/EO/916) is VACATED.

The application has an international filing date of 05 March 1999 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **08 July 2002**.

The present application will be forwarded to Art Unit 3653 for examination in due course.



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